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THE PROCTER & GAMBLE COMPANY
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EXAMINER

MICHALSKI, SEAN M

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THE GILLETTE COMPANY

Appeal 2008-006111
Application 10/798,140
Technology Center 3700

Decided¹: May 21, 2009

Before JAMESON LEE, SALLY C. MEDLEY, and MICHAEL P.
TIERNEY, *Administrative Patent Judges*.

LEE, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

Pursuant to 37 C.F.R. § 41.50(b)(2), the real party in interest, The Gillette Company (Gillette), requests rehearing under 37 C.F.R. § 41.52 of a decision entered February 11, 2009 (Decision). Specifically, Gillette

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

requests reconsideration of the Board's new ground of rejection of claim 67 under 35 U.S.C. § 112, first paragraph.² The request is *denied*.

The Board's explanation in the Decision of the rejection of claim 67 is reproduced below (Decision pp. 12-13):

A claim is unpatentable under 35 U.S.C. § 112, first paragraph, if a claim element is set forth in purely functional language that does not invoke the restricted construction under 35 U.S.C. § 112, sixth paragraph, for elements expressed as a means or step plus function limitation. *Ex parte Miyazaki*, 89 USPQ2d 1207, 1217 (BPAI 2008) (precedential); *see also Sanada v. Reynolds*, 67 USPQ2d 1459, 1462 (BPAI 2003). In this case, two elements in claim 67 are expressed in purely functional language and are not recited in language that would invoke the application of 35 U.S.C. § 112, sixth paragraph. Those elements are: (1) "a stabilizing feature disposed on an upper edge of each cartridge divider, constructed to engage the cartridge connecting portion and restrict movement of the cartridge connecting portion within an upper opening of the corresponding section"; and (2) "a protective feature, disposed on the upper edge of each cartridge divider, constructed to prevent contact between the stabilizing feature and a rear edge of the cartridge." (Claims App'x 17:10-14.) The specification also does not specially define any limiting structural meaning for these terms.

Accordingly, pursuant to 37 C.F.R. § 41.50(b), we enter a new ground of rejection of claim 67 under 35 U.S.C. § 112, first paragraph, for lack of an enabling disclosure commensurate with the scope of claim 67, because the claimed "stabilizing feature" and "protective feature" are purely functional recitations and do not invoke the application of 35 U.S.C. § 112, sixth paragraph. (Emphasis added.)

In its rehearing request on page 3, Gillette points to parts of its specification (page 3, ll. 3-10) which describe the location and function of a

² Gillette does not request reconsideration of the Board's affirmance of the Examiner's prior art rejections of claims 1-30, 32-60, and 66.

general “stabilizing feature” which is “disposed on an upper edge of at least some of the cartridge dividers” and which is “constructed to engage the cartridge connecting portion and restricting movement of the cartridge connecting portion within an upper opening of the corresponding section.” Also in its rehearing request on page 3, Gillette points to parts of its specification (page 11, line 27 to page 12, line 11) which describe a general “feature” to prevent contact between the stabilizing feature and a rear edge of the cartridge, and further points to parts of its specification which describe a particular implementation of the protective feature, in the form of a rib.

On the basis of what it identified in the specification, Gillette states (Rhg. Req. p.3, ll. 34-35):

Clearly, the specification supports the structural meaning for the terms “stabilizing feature” and “protective feature.”

Gillette’s argument is misplaced. We have not overlooked the identified portions of the specification. They do not change the reasonably indisputable conclusion that the recitations in claim 67 of a “stabilizing feature” and a “protective feature” which perform the stated functions are purely functional limitations not expressed as means-plus-function elements under 35 U.S.C. § 112, sixth paragraph. Gillette does not even assert that these terms should be construed as being limited to the particular structures disclosed in the specification, for example, a rib implementation for the “protective feature,” let alone explain why they should be so limited. Moreover, with regard to the “stabilizing feature,” the parts of the specification identified by Gillette are similarly functional and do not specify any particular structural configuration. Gillette also has not pointed to evidence in the record that one with ordinary skill would understand the

terms “stabilizing feature” or “protective feature” as well-established technical terms of art which specifically identify a structural configuration.

“Absent claim language carrying a narrow meaning, the PTO should only limit the claim based on the specification or prosecution history when those sources expressly disclaim the broader definition.” *In re Bigio*, 381 F.3d 1320, 1325 (Fed. Cir. 2004). Limitations not required by the claims should not be read into the claims from the specification. *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993).

For the foregoing reasons, the request for rehearing is *denied*.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

REHEARING DENIED

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